

DATE February 13, 1984
 SUBJECT ASARCO East Helena Smelter - RCRA Status

FROM Susan Manganiello, Attorney (ERC):
 Office of Regional Counsel



1068436 - R8 SDMS

TO Doug Skie, Chief (SMO):
 Air, Hazardous Wastes and Pesticides

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In a memo dated January 20, 1984, you requested answers to the following questions:

1. Whether the waste material generated from processing of a listed hazardous waste for metal recovery is exempt from RCRA regulation by 40 C.F.R. 261.4; and
2. How the processing of a listed hazardous waste at ASARCO's smelter fits within the scope of 40 C.F.R. 261.6.

It was difficult to formulate answers which would apply specifically to ASARCO but I think the following will provide adequate guidance for you and your staff to apply in determining how ASARCO's situation fits within the regulatory scheme.

DISCUSSION

Section 3001(b)(3)(A) of RCRA excludes certain mining wastes from regulation as a hazardous waste pending the completion of a study mandated therein. This statutory exclusion has been incorporated into the hazardous waste regulations promulgated pursuant to Subtitle C of RCRA (see 40 C.F.R. 261.4(b)(7)).

EPA has interpreted this exclusion very broadly as meaning wastes from the "exploration, mining, milling, smelting and refining of ore and minerals" (45 FR 76678-79; November 19, 1980). EPA memoranda applying this exclusion to specific situations focus on whether the material processed is an "ore or mineral" and whether the wastes produced from the "ore or mineral" processing are unique to the mining industry (for complete references to the EPA memoranda and guidance, see the Rosconda memo written by Loretta Pickeral dated August 5, 1983).

In your memo, you stated that ASARCO was processing hazardous waste listed as K069. The question in my mind is whether this waste is truly K069 or whether the waste is generated from the processing of an ore or mineral. Hazardous waste No. K069 is specifically emission control dust from secondary lead smelting. I do not understand what secondary smelting is and the information on ASARCO attached to your memo does not clarify for me whether or not the waste involved is from primary or secondary smelting.

If the waste being processed is truly K069, its generation and subsequent handling is regulated by Subtitle C of RCRA. If the emission control dust is generated from the smelting of an ore or mineral, it is not regulated by Subtitle C.

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Question #1

This question as phrased can be answered quite briefly in view of the above discussion: the waste generated from the processing for metal recovery of a listed hazardous waste is not within the scope of 40 C.F.R. 261.4(b)(7) since the listed waste does not fit within the dictionary definition of an "ore or mineral". It could be regulated as a hazardous waste if it meets the definition of a hazardous waste in 40 C.F.R. Part 261.

Question #2

From reading the attachments to your memo, the answer to Question #1 may not give you all that you may need in handling ASARCO's particular situation. The report prepared after an inspection at ASARCO's East Helena smelter indicates that ASARCO may have determined this emission control dust to be exempt from RCRA regulation because it is not a solid waste. (Citing the report: "ASARCO has indicated that the company considers this material to be feed material to its facility since it is being processed for its commercial value".

This raises the issue of whether or not this material is a solid waste. Solid waste is defined in 40 C.F.R. 261.2(a) and (b) as including waste material from the mining industry which is a mining by-product and is sometimes discarded. Emission control dust is a mining by-product and, according to industry practice, is sometimes discarded. Therefore, the emission control dust is a solid waste.

EPA must then determine whether or not the solid waste being reprocessed is also a hazardous waste. First, the mining exemption must be considered. If it does not apply, you must look to the nature of the solid waste. If the waste material is a listed hazardous waste, then the provisions of 40 C.F.R. 261.6(b) apply. If it is not a listed hazardous waste or a sludge, 40 C.F.R. 261.6(d) do not apply.

If you need further clarification or have any questions regarding application of these answers to ASARCO, please call me at 773 327-4912.